

#### SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, responsibilities, and benefits that apply to hospitals for providing community benefits that include charity care.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 22.01, eff. Sept. 1, 2003.

Sec. 311.042. DEFINITIONS. In this subchapter:

(1) "Charity care" means those amounts defined as charity care in Section 311.031(2).

(2) "Community benefits" means the unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits does not include the cost to the hospital of paying any taxes or other governmental assessments.

(3) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-kind donations to the hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(4) "Donations" means those amounts defined as donations in Section 311.031(5).

(5) "Education-related costs" means those amounts defined as education-related costs in Section 311.031(6).

(6) "Government-sponsored indigent health care" means those amounts defined as government-sponsored indigent health care in Section 311.031(8).

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health

care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(8) "Net patient revenue" is an accounting term and shall be calculated in accordance with generally accepted accounting principles for hospitals.

(9)(A) "Nonprofit hospital" means a hospital that is:

(i) eligible for tax-exempt bond financing;  
or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(iii) organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country.

(B) For purposes of this subchapter, a "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including but not limited to the patient or any person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services; or

(iv) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area.

(10) "Nonprofit supporting entities" means nonprofit entities created by the hospital or its parent entity to further

the charitable purposes of the hospital and that are owned or controlled by the hospital or its parent entity.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(12).

(12) "Tax-exempt benefits" means all of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(13).

(14) "Unreimbursed costs" means costs as defined in Section 311.031(14).

(15) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 2, eff. Sept. 1, 1995.

Sec. 311.043. DUTY OF NONPROFIT HOSPITALS TO PROVIDE COMMUNITY BENEFITS. (a) A nonprofit hospital shall provide health care services to the community and shall comply with all

federal, state, and local government requirements for tax exemption in order to maintain such exemption. These health care services to the community shall include charity care and government-sponsored indigent health care and may include other components of community benefits as both terms are defined in Sections 311.031 and 311.042.

(b) In order to qualify as a charitable organization under Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, and to satisfy the requirements of this subchapter, a nonprofit hospital shall provide community benefits, which include charity care and government-sponsored indigent health care, in an amount that satisfies the requirements of Section 311.045. A determination of the amount of charity care and government-sponsored indigent health care provided by a hospital shall be based on the most recently completed and audited prior fiscal year of the hospital.

(c) Reductions in the amount of community benefits, which includes charity care and government-sponsored indigent health care, provided by a nonprofit hospital shall be considered reasonable when the financial reserves of the hospital are reduced to such a level that the hospital would be in violation of any applicable bond covenants, when necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.

(d) A hospital's admissions policy must provide for the admission of financially indigent and medically indigent persons pursuant to its charity care requirements as set forth in this subchapter.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.044. COMMUNITY BENEFITS PLANNING BY NONPROFIT HOSPITALS. (a) A nonprofit hospital shall develop:

(1) an organizational mission statement that identifies the hospital's commitment to serving the health care needs of the community; and

(2) a community benefits plan defined as an operational plan for serving the community's health care needs that sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care, as the terms community benefits, charity care, and government-sponsored indigent health care are defined by Sections 311.031 and 311.042, and that identifies the populations and communities served by the hospital.

(b) When developing the community benefits plan, the hospital shall consider the health care needs of the community as determined by community-wide needs assessments. For purposes of this subsection, "community" means the primary geographic area and patient categories for which the hospital provides health care services; provided, however, that the primary geographic area shall at least encompass the entire county in which the hospital is located.

(c) The hospital shall include at least the following elements in the community benefits plan:

(1) mechanisms to evaluate the plan's effectiveness, including but not limited to a method for soliciting the views of the communities served by the hospital;

(2) measurable objectives to be achieved within a specified time frame; and

(3) a budget for the plan.

(d) In determining the community-wide needs assessment required by Subsection (b), a nonprofit hospital shall consider consulting with and seeking input from representatives of the following entities or organizations located in the community as defined by Subsection (b):

(1) the local health department;

(2) the public health region under Chapter 121;

(3) the public health district;

(4) health-related organizations, including a health professional association or hospital association;

(5) health science centers;

(6) private business;

(7) consumers;

(8) local governments; and

(9) insurance companies and managed care organizations with an active market presence in the community.

(e) Representatives of a nonprofit hospital shall consider meeting with representatives of the entities and organizations listed in Subsection (d) to assess the health care needs of the community and population served by the nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 1997.

Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE REQUIREMENTS. (a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Bureau of State Health Data and Policy Analysis at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the

charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

(b)(1) A nonprofit hospital or hospital system may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or

(C) charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(2) For purposes of satisfying Subdivision (1)(C), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(3) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A)

shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B) and (b)(1)(C) shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) For purposes of this section, a hospital that satisfies Subsection (b)(1)(A) or (b)(3) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(1)(B) or (b)(1)(C).

(e) In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

(f) A nonprofit hospital or hospital system under contract with a local county to provide indigent health care services under Chapter 61 may credit unreimbursed costs from direct care provided to an eligible county resident toward meeting the nonprofit hospital's or system's charity care and government-sponsored indigent health care requirement.



Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 781, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 260, Sec. 1, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 78, eff. Sept. 1, 2001.

Sec. 311.0455. ANNUAL REPORT BY THE DEPARTMENT. (a) The department shall submit to the attorney general and comptroller not later than July 1 of each year a report listing each nonprofit hospital or hospital system that did not meet the requirements of Section 311.045 during the preceding fiscal year.

(b) The department shall submit to the attorney general and the comptroller not later than November 1 of each year a report containing the following information for each nonprofit hospital or hospital system during the preceding fiscal year:

(1) the amount of charity care, as defined by Section 311.031, provided;

(2) the amount of government-sponsored indigent health care, as defined by Section 311.031, provided;

(3) the amount of community benefits, as defined by Section 311.042, provided;

(4) the amount of net patient revenue, as defined by Section 311.042, and the amount constituting four percent of net patient revenue;

(5) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;

(6) a computation of the percentage by which the amount described by Subdivision (5) is above or below the dollar amount of the hospital's or hospital system's charity care and community benefits requirements;

(7) the amount of tax-exempt benefits, as defined by Section 311.042, provided, if the hospital is required to report

tax-exempt benefits under Section 311.045(b)(1)(A) or (b)(1)(B); and

(8) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(c) The department shall make the report required by Subsection (b) available to the public and shall issue a press release concerning the availability of the report.

(d) For purposes of Subsection (b), "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1997, 75th Leg., ch. 260, Sec. 2, eff. Jan. 1, 1998.

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section:

(1) "Department" means the Department of State Health Services.

(2) "Nonprofit hospital" has the meaning assigned by Section 311.042(9)(A).

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the most recent fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a written request for certification to the department not later than May 31 of each year stating that the hospital or system is eligible for certification. The department must determine eligibility for certification not later than December 31 of the year in which the department receives the request by checking the report submitted by the hospital or system under Section 311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Section 311.045. If a report under Section 311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement of Subsection (c)(1) is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification. The department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on December 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not

apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 22.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [376](#), Sec. 1, eff. June 17, 2005.

Sec. 311.046. ANNUAL REPORT OF COMMUNITY BENEFITS PLAN. (a) A nonprofit hospital shall prepare an annual report of the community benefits plan and shall include in the report at least the following information:

- (1) the hospital's mission statement;
- (2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b);
- (3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;
- (4) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and
- (5) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in Subdivision (4) and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards".

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Bureau of State Health Data

and Policy Analysis at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report of the community benefits plan is public information; that it is filed with the department; and that it is available to the public on request from the department. The statement shall be posted in prominent places throughout the hospital, including but not limited to the emergency room waiting area and the admissions office waiting area. The statement shall also be printed in the hospital patient guide or other material that provides the patient with information about the admissions criteria of the hospital.

(d) Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program, including the charity care and eligibility policies of the program, and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, in the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program and policies. Each hospital shall annually publish notice of the hospital's charity care program and policies in a local newspaper of general circulation in the county. Each notice under this subsection must be written in language readily understandable to the average reader.

(e) For purposes of this section, "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 260, Sec. 3, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 2, eff. Sept. 1, 2001.

Sec. 311.0461. INFORMATIONAL MANUAL. The department shall annually publish a manual that lists each nonprofit hospital in this state with a brief summary of the charity care policies and community benefits that the nonprofit hospital provides.

Added by Acts 2001, 77th Leg., ch. 654, Sec. 3, eff. Sept. 1, 2001.

Sec. 311.047. PENALTIES. The department may assess a civil penalty against a nonprofit hospital that fails to make a report of the community benefits plan as required under this subchapter. The penalty may not exceed \$1,000 for each day a report is delinquent after the date on which the report is due. No penalty may be assessed against a hospital under this subsection until 10 business days have elapsed after written notification to the hospital of its failure to file a report.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.048. RIGHTS AND REMEDIES. The rights and remedies provided for in this subchapter shall not limit, affect, change, or repeal any other statutory or common-law rights or remedies available to the state or a nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.